

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for Correction of
the Coast Guard Record of:

BCMR Docket No. 2019-193

[REDACTED]

FINAL DECISION

This proceeding was conducted according to the provisions of 10 U.S.C. § 1552 and 14 U.S.C. § 2507. The Chair docketed the case after receiving the completed application on June 26, 2019, and assigned the case to a staff attorney to prepare the decision pursuant to 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 2022, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant, a former Seaman Apprentice (SN/E-3), who was honorably discharged on May 28, 1970, by reason of physical disability due to enuresis,¹ asked the Board to correct his record by changing his Character of Service on his DD-214 from Honorable to Honorable – Physical Disability. In addition, the applicant asked that his date of birth (DOB) be corrected to reflect his actual DOB as shown on his birth certificate, instead of the erroneous DOB shown on his DD-214. The applicant alleged that his medical records support a discharge due to physical disability.

To support his claims, the applicant submitted copies of Coast Guard records, which are included in the summary below, and a copy of his birth certificate showing the names of his parents (the same as those provided in his military record) and a DOB with a different month of birth but the same year and day of birth.

¹ Enuresis is commonly known as bed-wetting.

SUMMARY OF THE RECORD

The applicant enlisted in the Coast Guard on May 5, 1969. His enlistment documents show the same date of birth that appears on the birth certificate he submitted.

In November 1969, the applicant was evaluated by a urology service that diagnosed him with enuresis and prescribed him Tofranil, but when there was no improvement after a month, the prescription was discontinued.

From February 17, 1970, through February 27, 1970, the applicant was admitted to a hospital for complications with enuresis. A Clinical Narrative Summary states that the applicant admitted to having enuresis “all his life” and reported having no symptoms of urinary tract infections. The Clinical Narrative Summary also discusses the applicant’s family history which included his father and brother both experiencing enuresis into young adulthood. A psychiatric physician recommended that an enuresis-conditioning-apparatus be obtained, that an effort be made to “condition the patient to awaken when he starts to urinate,” and that the applicant be hospitalized during the conditioning process. The hospital’s Chief of Medicine believed that the applicant’s medical diagnosis was incompatible with active-duty service life and recommended that the applicant be discharged from the Coast Guard.

On May 28, 1970, as a result of the applicant’s enuresis and the recommendation of medical professionals, he was honorably discharged from the Coast Guard. His DD 214 states that he received an Honorable discharge in accordance with Article 12-B-9 of the Personnel Manual and separation code 277.

VIEWS OF THE COAST GUARD

On January 27, 2020, a judge advocate (JAG) of the Coast Guard submitted an advisory opinion in which she recommended that the Board grant partial relief in this case and adopted the findings and analysis provided in a memorandum prepared by the Personnel Service Center (PSC).

The JAG argued that the applicant failed to show that the Coast Guard committed an error or injustice when it gave him an Honorable Character of Service on his DD-214. In addition, the JAG argued that the applicant is requesting an unauthorized Character of Service narrative be used instead of the correct one he was issued and his request for a new Character of Service narrative should be denied.

In regard to the erroneous DOB provided on his DD-214, the JAG acknowledged the error and recommended the Board grant relief by issuing a DD-215 to correct the erroneous DOB.

APPLICANT’S RESPONSE TO THE VIEWS OF THE COAST GUARD

On January 27, 2020, the Chair sent the applicant a copy of the Coast Guard’s views and invited him to respond within thirty days. No response was received.

APPLICABLE LAW AND POLICY

Article 12-B-3 of the Coast Guard Personnel Manual in effect in 1970 states that there are five authorized kinds of discharges and characters of separation for enlisted members:

<u>TYPE OF DISCHARGE</u>	<u>CHARACTER OF SEPARATION</u>
Honorable	Honorable
General	Under honorable conditions
Undesirable	Conditions other than honorable
Bad conduct	Conditions other than honorable
Dishonorable	Dishonorable

Article 12-B-9 of the Coast Guard Personnel Manual² in effect in 1970 authorized the separation of members for medical reasons, including pre-existing medical disabilities. Enclosure 2 of the DD-214 Manual then in effect, COMDTINST M1900.4, required that all personnel discharged due to pre-existing disabilities under Article 12-B-9 be assigned separation code 277, defined as follows:

Separation Code 277. Physical Disability existing prior to entry on active duty—established by medical board and individual made application for discharge by reason of physical disability—not entitled to receive severance pay.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions based on the applicant's military record and submissions, the Coast Guard's submission and applicable law:

1. The Board has jurisdiction over this matter under 10 U.S.C. § 1552(a) because the applicant is requesting correction of an alleged error or injustice in his Coast Guard military record. The Board finds that the applicant has exhausted his administrative remedies, as required by 33 C.F.R. § 52.13(b), because there is no other currently available forum or procedure provided by the Coast Guard for correcting the alleged error or injustice that the applicant has not already pursued.

2. The application filed by the applicant was not timely. To be timely, an application for the correction of a military record must be submitted to the Board within three years after the alleged error or injustice was discovered.³ The record shows that the applicant received and signed his DD-214 showing his Honorable character of service on May 28, 1970. Therefore, the preponderance of the evidence shows that the applicant knew of the alleged error in his record in May 1970, and his application is untimely.

² In 1970, Article 12-B-9 of the Coast Guard Personnel Manual, authorized all types of medical and disability separations, including for circumstances stated in Code 277. This same policy required that the applicant receive a reenlistment code of RE-3P—Otherwise eligible for reenlistment except for disqualifying factor.

³ 10 U.S.C. § 1552(b) and 33 C.F.R. § 52.22.

3. The Board may excuse the untimeliness of an application if it is in the interest of justice to do so.⁴ In *Allen v. Card*, 799 F. Supp. 158 (D.D.C. 1992), the court stated that the Board should not deny an application for untimeliness without “analyzing both the reasons for the delay and the potential merits of the claim based on a cursory review”⁵ to determine whether the interest of justice supports a waiver of the statute of limitations. The court noted that “the longer the delay has been and the weaker the reasons are for the delay, the more compelling the merits would need to be to justify a full review.”⁶ Pursuant to these requirements, the Board finds the following:

a. Regarding his delay in filing his application, the applicant failed to explain what caused his delay in applying to the Board for relief. The Board finds that the applicant’s request for consideration is not persuasive because he failed to show that anything prevented him from seeking correction of the alleged error or injustice more promptly.

b. A cursory review of the merits of this case shows that the applicant’s claim regarding his character of service on his DD-214 potentially lacks merit. The records show that the applicant’s reason for discharge—enuresis—was a condition that existed prior to his enlistment in the service. During his February 1970 hospital stay, the applicant admitted that he had struggled with enuresis all his life. The reason for his discharge was therefore accurately documented on his DD-214 because he was discharged under Article 12-B-9 of the Personnel Manual with separation code 277, which means a discharge for a pre-existing medical condition. Finally, the applicant’s request for a different character of service—Honorable: Physical Disability—is not a recognized or authorized character of service description. Neither Article 12-B-3 of the Personnel Manual then in effect nor the applicable manuals today authorize “Honorable: Physical Disability” as a character of service entry on a DD-214. Moreover, the disputed DD-214 is presumptively correct,⁷ and the record contains no evidence that substantiates the applicant’s allegations of error or injustice with respect to his character of service.

4. Accordingly, with respect to the applicant’s character of service, the Board will not excuse the application’s untimeliness or waive the statute of limitations to conduct a more thorough review of the merits. The applicant’s request to add “Physical Disability” to his character of service on his DD-214 should therefore be denied.

5. In regard to the applicant’s DOB shown on his DD-214, however, the Board agrees with the Coast Guard that the applicant has shown that his DOB on that document is erroneous and should be changed to reflect his actual DOB as shown on his birth certificate and other military records.

⁴ 10 U.S.C. § 1552(b).

⁵ *Allen v. Card*, 799 F. Supp. 158, 164 (D.D.C. 1992).

⁶ *Id.* at 164, 165; see also *Dickson v. Secretary of Defense*, 68 F.3d 1396 (D.C. Cir. 1995).

⁷ 33 C.F.R. § 52.24(b); see *Arens v. United States*, 969 F.2d 1034, 1037 (Fed. Cir. 1992) (citing *Sanders v. United States*, 594 F.2d 804, 813 (Ct. Cl. 1979), for the required presumption, absent evidence to the contrary, that Government officials have carried out their duties “correctly, lawfully, and in good faith.”).

(ORDER AND SIGNATURES ON NEXT PAGE)

ORDER

The application of former [REDACTED] [REDACTED] ([REDACTED] - [REDACTED]) [REDACTED] [REDACTED] for the correction of his military record is denied in part and granted in part as follows:

His request to have his character of service on his DD-214 changed to “Honorable – Physical Disability” is denied.

His request to have his date of birth on his DD-214 changed to reflect his date of birth shown on his birth certificate, which he submitted with his application, is granted. The Coast Guard shall issue a DD-215 to correct his date of birth to the one shown on his birth certificate submitted with his BCMR application.

August 26, 2022

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED]